





## The Ordinance of 1787.

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE  
UNITED STATES NORTHWEST OF THE RIVER OHIO.

*Be it ordained by the United States in Congress assembled,* That the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

*Be it ordained by the authority aforesaid,* That the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them: And where there shall be no children or descendants, then in equal parts to the next of kin in equal degree; and, among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parents' share; and there shall, in no case, be a distinction between kindred of the whole and half-blood; saving, in all cases, to the widow of the intestate her third part of the real estate for life, and one-third part of the personal estate; and this law, relative to descents and dower, shall remain in full force until altered by the legislature of the district. And, until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved,

and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however to the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

*Be it ordained by the authority aforesaid,* That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1000 acres of land, while in the exercise of his office.

There shall be appointed, from time to time, by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his Executive department; and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but, afterwards, the legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the governor shall appoint such magistrates and other civil officers,

In each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the General Assembly shall be organized, the powers and duties of the magistrates and other civil officers, shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be 5000 free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the General Assembly: *Provided*, That, for every 500 free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to 25; after which, the number and proportion of representatives shall be regulated by the legislature: *Provided*, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, 200 acres of land within the same: *Provided, also*, That a freehold in 50 acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The General Assembly, or Legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue

in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in 500 acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the General Assembly, when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not of voting during this temporary government.

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and

permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest :

*It is hereby ordained and declared by the authority aforesaid,* That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit :

ART. 1st. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2d. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury ; of a proportionate representation of the people in the legislature ; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great. All fines shall be moderate ; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land ; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

ART. 3d. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians ; their lands and property shall never be taken from them without their consent ; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress ; but laws founded in justice and humanity, shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4th. The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Con-



federation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes, for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and, in no case, shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the Confederacy, without any tax, impost, or duty, therefor.

ART. 5th. There shall be formed in the said territory, not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The Western State in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post St. Vincent's, due North, to the territorial line between the United States and Canada; and, by the said territorial line, to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincent's, to the Ohio; by the Ohio, by a direct line, drawn due North from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The Eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however*, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress

shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies North of an East and West line drawn through the South-erly bend or extreme of lake Michigan. And, whenever any of the said States shall have 60,000 free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a per-manent constitution and State government: *Provided*, the con-stitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than 60,000.

ART. 6th. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided, always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the orig-inal States, such fugitive may be lawfully reclaimed and con-veyed to the person claiming his or her labor or service as aforesaid.

*Be it ordained by the authority aforesaid*, That the resolu-tions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.



While the Convention which framed the national Constitution was sitting in Philadelphia, the Continental Congress, then in session in New York, adopted a measure which has been justly pronounced second only in importance to the crowning act of the Convention at Philadelphia. On July 11, 1787, a committee, of which Nathan Dane of Massachusetts was chairman, reported "An Ordinance for the Government of the Territory of the United States Northwest of the Ohio"; and this ordinance, with the addition of an article forever forbidding slavery to cross the Ohio river, was adopted on July 13.

"One of the most momentous acts of the Continental Congress," says Higginson, "had been to receive from the State of Virginia the gift of a vast unsettled territory northwest of the Ohio, and to apply to this wide realm the guarantee of freedom from slavery. This safeguard was but the fulfilment of a condition suggested by Timothy Pickering, when, in 1783, General Rufus Putnam and nearly three hundred army officers had proposed to form a new state in that very region of the Ohio. They sent in a memorial to Congress asking for a grant of land. Washington heartily endorsed the project, but nothing came of it. North Carolina soon after made a cession of land to the United States, and then revoked it; but the people on the ceded territory declared themselves for a time to be a separate state under the name of Franklin. Virginia, through Thomas Jefferson, finally delivered a deed on March 1, 1784, by which she ceded to the United States all her territory northwest of the Ohio. The great gift was accepted, and a plan of government was adopted, into which Jefferson tried to introduce an anti-slavery ordinance, but he was defeated by a single vote. Again, in 1785, Rufus King of Massachusetts, seconded by William Ellery of Rhode Island, proposed to revive Jefferson's rejected clause, but again it failed, being smothered by a committee. It was not till July 13, 1787, that the statute passed by which slavery was forever prohibited in the territory of the Northwest, this being moved by Nathan Dane as an amendment to an ordinance already adopted, which he himself had framed, and being passed by a vote of every state then present in the Congress, eight in all. Under this statute the Ohio Company, organized in Boston the year before as the final outcome of Rufus Putnam's proposed colony of officers, bought from the government five or six millions of acres, and entered on the first great movement of emigration west of the Ohio. The report creating the colony provided for public schools, for religious institutions and for a university. The land was to be paid for in United States certificates of debt, and its price in specie was between eight and nine cents an acre. The settlers were almost wholly men who had served in the army, and were used to organization and discipline. The Indian title to the lands of the proposed settlement had been released by treaty. It was hailed by all as a great step in the national existence, although it was a far greater step than any one yet dreamed."

The Northwest Territory so established included the present states of Ohio, Indiana, Illinois, Michigan and Wisconsin. In 1784, Jefferson proposed a plan dividing the Northwest into ten states, each about a hundred and twenty miles wide, north and south; and for these states he proposed the following names: Sylvania, Michigania, Assenisipia, Illinoia, Polypotamia, Cherronesus, Metropotamia, Saratoga, Pelisipia and Washington. There was a great deal of pretentious classicism in America at this time. Our new towns everywhere were being freighted with high-sounding Greek and Roman names. The founders of Marietta named one of their squares *Capitolium*; the road which led up from the river was the *Sacra Via*; and the new garrison, with block houses at the corners, was the *Campus Martius*. Jefferson was not the first to suggest the forms of states in the Northwest.

Washington, a year before, laid out on paper two states, which closely resembled the Ohio and Michigan of today. The present five states differ somewhat from the plan of 1787, the southern tier of states having encroached on the northern for the sake of certain harbors on the great lakes.

The passage of the Ordinance of 1787 caused a sudden and great emigration from the eastern states into the new territory, and the growth of the great West, which has formed so momentous a chapter in the history of the country, began. Within a year following the organization of the territory, twenty thousand people became settlers upon the banks of the Ohio. The first settlement was made at Marietta (so named in honor of Marie Antoinette) April 7, 1788, by General Rufus Putnam and a company from Massachusetts—the Ohio Company was formed at a convention held at the Bunch of Grapes, in Boston, March 1, 1786—who came down the river from the neighborhood of Pittsburgh on a boat named the *Mayflower*. "Forever honored be Marietta as another Plymouth."

The men who first settled the Northwest Territory and who set the seal of their character and institutions upon it were of the best men of New England. "Look for a moment," said Mr. Hoar, in his oration at the Marietta Centennial, "at the forty-eight men who came here a hundred years ago to found the first American civil government whose jurisdiction did not touch tide-water. See what manner of men they were; in what school they had been trained; what traditions they had inherited. I think you must agree that of all the men who ever lived on earth fit to perform 'that ancient, primitive and heroical work,' the founding of a State, they were the fittest." The thorough and detailed passage upon the personal and political character of the founders of the Northwest, in Mr. Hoar's oration, is deserving of special study. "No colony in America," said Washington, who was deeply interested in the development of the West, and who was the warm personal friend of Putnam, "was ever settled under such favorable auspices as that which has just commenced at the Muskingum. Information, property and strength will be its characteristics. I know many of the settlers personally, and there never were men better calculated to promote the welfare of such a community."

General Rufus Putnam was the great leader in this work of colonizing the West. "To Nathan Dane belongs the immortal honor of having been the draughtsman of the statute [the Ordinance of 1787] and of moving the anti-slavery amendment." To Manasseh Cutler—lately a chaplain in the army and in 1787 minister at Ipswich—who was chiefly instrumental in securing the passage of the act in the shape it finally took, and who was one of the leaders in promoting the settlement at Marietta which immediately followed, belongs no less credit.

The Ordinance of 1787 is properly pronounced "the greatest and most important legislative act in American history." "The disrespect with which the Continental Congress is sometimes spoken of," says Mr. Hoar, "is most unjust. Its want of vigor was due to the limitation put upon its powers by the states, and to no want of wisdom or energy in its members. That body will ever hold a great place in history—if it had done nothing else—which declared independence, which called Washington to the chief command, which began its labors with the great state papers which Chatham declared surpassed the masterpieces of antiquity, and ended them with the Ordinance of 1787."

The most notable article in the Ordinance of 1787 was that which forever prohibited slavery from the Northwest. "Here," says Mr. Hoar, "was the first human government under which absolute civil and religious liberty has always prevailed. Here no witch was ever hanged or burned.

Here no heretic was ever molested. Here no slave was ever born or dwelt. When older states or nations, where the chains of human bondage have been broken, shall utter the proud boast, 'With a great sum obtained I this freedom,' each sister of this imperial group — Ohio, Michigan, Indiana, Illinois, Wisconsin — may lift her queenly head with the yet prouder answer, 'But I was free-born.'" The importance of this anti-slavery article of the Ordinance, in view of the course of our national history during the century that has followed, cannot be overestimated. "It fixed forever," said Webster, "the character of the population in the vast regions northwest of the Ohio by excluding from them involuntary servitude. It impressed on the soil itself, while it was yet a wilderness, an incapacity to sustain any other than freemen. It laid the interdict against personal servitude in original compact, not only deeper than all local law, but deeper, also, than all local constitutions." Jefferson had worked with the greatest earnestness to secure the insertion of a clause in the Ordinance of 1784, prohibiting slavery in the Northwest, and the clause was lost by only a single vote. "The voice of a single individual," said Jefferson, "would have prevented this abominable crime. Heaven will not always be silent; the friends of the rights of human nature will in the end prevail." The Ordinance of 1787 secured what Jefferson had labored for. "Thomas Jefferson," says Bancroft, "first summoned Congress to prohibit slavery in all the territory of the United States; Rufus King lifted up the measure when it lay almost lifeless on the ground, and suggested the immediate instead of the prospective prohibition; a Congress composed of five southern states, to one from New England, and two from the middle states, headed by William Grayson, supported by Richard Henry Lee, and using Nathan Dane as scribe, carried the measure to the goal in the amended form in which King had caused it to be referred to a committee; and, as Jefferson had proposed, placed it under the sanction of an irrevocable compact."

The Ordinance of 1784, the original of the Ordinance of 1787, was drawn up by Jefferson himself, as chairman of the committee of three, of which Chase of Maryland and Howell of Rhode Island were the other members, which had been appointed by Congress to prepare a plan for the temporary government of the territory. The draught of the committee's report, in Jefferson's own handwriting, is still preserved in the archives of the State Department at Washington. "It is as completely Jefferson's own work," remarks Bancroft, "as the Declaration of Independence." The text of this important paper may be found in Randall's *Life of Jefferson*, vol. i, p. 396, and elsewhere, and should be compared with the Ordinance of 1787. Jefferson's anti-slavery article was as follows: "That after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personal guilty." The ordinance, shorn of this proscription of slavery, was adopted April 23, 1784, and remained in force three years, being superseded by the Ordinance of 1787.

See Hon. George F. Hoar's oration at the Marietta Centennial, April 7, 1888; Bancroft's *History of the United States*, vol. vi, chap. vi, on "The Colonial System of the United States"; the *Life, Journals and Correspondence of Manasseh Cutler*, especially the hundred pages giving the diary of his journey to New York and Philadelphia in 1787, on his mission to secure the passage of the Ohio bill; and, for its account of the early settlers and their life, Hildreth's *Pioneer History*. The course of lectures at Madison, Wisconsin, for the spring of 1888, in the line of the Old South lectures in Boston, was devoted to the history of the Northwest Territory from the

earliest times down to its final division into states, the special subjects being as follows: The Discovery of the Northwest; French Occupation of the Northwest; The Ordinance of 1787; The Division of the Northwest into States; Commonwealth Builders of the Northwest; The Position of the Northwest in General History.

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"We are accustomed to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked and lasting character than the Ordinance of 1787."—*Daniel Webster.*

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"The Ordinance of 1787 belongs with the Declaration of Independence and the Constitution. It is one of the three title deeds of American constitutional liberty. As the American youth for uncounted centuries shall visit the capital of his country—strongest, richest, freest, happiest of the nations of the earth—from the stormy coast of New England, from the luxuriant regions of the Gulf, from the lakes, from the prairie and the plain, from the Golden Gate, from far Alaska—he will admire the evidences of its grandeur and the monuments of its historic glory. He will find there rich libraries and vast museums and great cabinets, which show the product of that matchless inventive genius of America, which has multiplied a thousand fold the wealth and comfort of human life. He will see the simple and modest portal through which the great line of the Republic's chief magistrates have passed at the call of their country to assume an honor surpassing that of emperors and kings, and through which they have returned, in obedience to her laws, to take their place again as equals in the ranks of their fellow-citizens. He will stand by the matchless obelisk which, loftiest of human structures, is itself but the imperfect type of the loftiest of human characters. He will gaze upon the marble splendors of the capitol, in whose chambers are enacted the statutes under which the people of a continent dwell together in peace, and the judgments are rendered which keep the forces of state and nation alike within their appointed bounds. He will look upon the record of great wars and the statues of great commanders. But if he knew his country's history, and considered wisely the sources of her glory, there is nothing in all these which will so stir his heart as two faded and time-soiled papers, whose characters were traced by the hand of the fathers a hundred years ago. They are the original records of the acts which devoted this nation forever to equality, to education, to religion and to liberty. One is the Declaration of Independence, the other the Ordinance of 1787."—*George F. Hoar.*

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